

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) WT Docket No. 97-82
Rules Regarding Installment Payment)
Financing For Personal Communications)
Services (PCS) Licensees)

PETITION FOR RECONSIDERATION

AmeriCall International, LLC ("AmeriCall"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby petitions the Commission for reconsideration of two aspects of the decision released in the Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97-82, 62 Fed. Reg. 55,348 (October 24, 1997) (Second Report and Order).

EXECUTIVE SUMMARY

In general, AmeriCall commends the Commission for reaching an equitable decision and fairly balancing the many complex interests at stake. We urge the Commission to avoid making substantial changes in its decision. Major alterations of the carefully crafted balance achieved in the Second Report and Order would increase the risk of litigation, resulting in more numerous bankruptcies and further deployment delays.

Two issues, however, deserve further consideration. First, we believe the amnesty option should be streamlined to relieve administrative burdens and the potential for alteration of the Commission's decision by an agency lacking the benefit of a record concerning this proceeding. It is important to note that because the return of licenses will terminate licensees' debt obligations as to remaining license debt and installment payments

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already made, there will be no need for the Commission to take on the burdensome task of coordinating amnesty debt relief and amnesty-related installment payment refund requests with the Department of Justice.

Second, AmeriCall urges the Commission to set timing goals for provision of installment payment refunds to licensees electing the amnesty option.

I. Department of Justice Coordination is Unnecessary in Amnesty Context and Could Delay or Reverse Effect of Commission Decision

In adopting the amnesty option, the Commission stated that any surrender of licenses in exchange for debt relief and waiver of default payments would be “subject to coordination with the Department of Justice pursuant to applicable federal claims collections standards.” Second Report and Order, ¶ 53 & n.119 (citing 4 C.F.R. Parts 101-105). We urge the Commission to take a closer look at the collection regulations and recognize that coordination with the Department of Justice in the amnesty context is unnecessary, is not called for by Title 4, and is not in the public interest.

Title 4 of the Code of Federal Regulations provides that in the case of claims (debts) that exceed \$20,000, “[I]f an agency determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.” 4 C.F.R. § 104.1(b).

If a licensee elects amnesty, the FCC debt formerly owed by that licensee will no longer have legal merit, in light of the Commission’s decision that the debts of such electing licensees will be relieved. In other words, the new options adopted by the FCC make void the former legal merit of debt obligations of licensees upon their election to exercise the amnesty option.

Further, where debt obligations are eliminated in exchange for return of licenses, any default payments that would otherwise be owed in connection with cessation of payments no longer will have legal substance, because the underlying debt obligations, on which default payments would have been assessed, will have disappeared. Moreover, the FCC decided to waive default payments in this context; thus for this reason as well, such obligations will no longer have legal merit.

In view of the foregoing, it becomes evident that Title 4 regulations expressly exclude this situation. Where debts that no longer have legal merit are terminated, Title 4 does not require the Department of Justice to take on the onerous task of case-by-case evaluation. We believe it is manifestly in the public interest for the FCC to determine that interdepartmental coordination is unnecessary here, so as to avoid delay and uncertainty for licensees and administrative and adjudicatory burdens upon the Department of Justice and upon the Commission.

For these reasons, we urge the Commission to determine that debt obligations relieved by an amnesty election, and any default payments that otherwise would be owing thereon, fall within the category of terminated obligations that no longer have legal merit, under 4 C.F.R. § 104.1(b), and consequently the Commission need not coordinate such terminations with the Department of Justice.

II. The FCC Should Clarify Timing of Installment Payment Refunds

In its Order, the FCC stated:

[W]e direct the Wireless Telecommunications Bureau to refund any installment payments made (whether due on or before March 31, 1997) on any license that is surrendered pursuant to this *Second Report and Order*. In addition, we will forgive payment of any due, but unpaid, installment payments for any surrendered license.

Second Report and Order, ¶ 58 (footnote omitted). We ask the Commission to provide additional, more specific guidance as to the timing of disposition of refund requests.

Knowledge of the approximate speed at which the government intends to process refund requests would help licensees better plan their business affairs. Companies generally prepare financial statements for investors on a quarterly or even monthly basis. The knowledge of when a refund will arrive will assist small businesses in retaining and accruing additional investment by facilitating more accurate revenue flow projections.

We urge the Commission to establish a rapid speed of service for processing of refund requests is in the interests of the public and of industry, as the returned funds likely will be poured into infrastructure, deployment, and commencement of operations. We recognize, nonetheless, that the Commission and the Treasury Department at times operate under significant resource constraints. We therefore ask the Commission, at a minimum, to set flexible timing goals or date bands for provision of refunds to licensees electing amnesty. For example, the Commission could determine refunds will be provided within one to three weeks after an acceptable refund request is filed. This would provide greater certainty in recordkeeping, reassure investors and licensees, and facilitate more rapid deployment of service to the public.


CONCLUSION

We urge the Commission to determine that debt obligations relieved by an amnesty election, installment payments already made concerning licenses that are the subject of an amnesty election, and any default payments that otherwise would be owing thereon, will be treated for purposes of Section 104.1(b) of Title 4 of the Code of Federal Regulations as terminated obligations that no longer have legal merit. As a consequence

of such treatment, the Commission would not need to coordinate such terminations with the Department of Justice. In addition, we urge the Commission to establish a rapid speed of service for provision of installment payment refunds to licensees electing the amnesty option.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa Johnson, an administrative assistant in the office of AmeriCall International, LLC, do hereby certify under penalty of perjury that on this 23^d day of November, 1997, the foregoing Petition was delivered by hand to the Acting Secretary of the Federal Communications Commission and to the following persons:

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